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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Preemption of Local Zoning) IB Docket No. 95-59
Regulation of Satellite Earth) DA 91-577
Stations) 45-DSS-MISC-93

COMMENTS OF COMSAT VIDEO ENTERPRISES, INC.

COMSAT Video Enterprises, Inc. (CVE) herein submits its Comments in response to the Federal Communications Commission's Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding.

In 1986, the Commission adopted rules to preempt local land use regulations which inhibit access to satellite-based communications.¹ These rules generally preempt any local zoning ordinance which differentiates between satellite and non-satellite antennas unless 1) the ordinance is a reasonable means of achieving a local health, safety or aesthetic objective; and 2) the ordinance does not impose excessive costs or unreasonably inhibit reception.²

¹ Preemption of Local Zoning or other Regulation of Receive-only Satellite Earth Stations, 51 Fed. Reg. 5519 (Feb. 14, 1986) ("Preemption Order").

² See 47 C.F.R. §25.104.

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However, despite the regulatory regime established by the FCC, it has become increasingly clear to CVE, Hughes³ and others that greater Commission involvement in direct review of zoning ordinances is necessary, as many local zoning restrictions continue to create unreasonable barriers to the growth of satellite-based services. CVE therefore supports the modifications to the rules which are proposed in the Notice and particularly urges adoption of the rebuttable presumptions of unreasonableness that would apply to dishes less than one-meter in diameter, as well as to two-meter dishes in certain commercial or industrial areas. In support of its Comments, CVE submits the following information.

CVE is one of the country's leading providers of satellite-delivered home entertainment to the hospitality industry. CVE is currently in the process of replacing larger antennas with 0.8 meter receive-only Ku-band earth stations at 1125 hotels. The ability to install these antennas quickly and inexpensively in response to customer demand is essential to the successful operation of the network. Customers demand speedy installation and on-time delivery of service. Absent rapid initiation of service, a highly competitive marketplace offers the customers other choices, which they are ready, willing and quickly able to move to.

³ See e.g., Comments of Hughes Network Systems, Inc. in this proceeding.

Despite the Preemption Order, CVE has been historically delayed by local zoning ordinances which have unduly burdened the installation of its antennas at various sites across the United States. At times, this burden has been the result of a local ordinance whose very criteria have been impossible to meet (for example, a local ordinance which bars roof top installations or imposes unreasonable screening requirements). At other times, this burden has been in the form of a completely unwarranted and expensive paper nightmare, requiring the creation and submission of highly detailed engineering, elevation and landscape plans, wind loading diagrams and site surveys, all of which have been required to be submitted well in advance of irregularly scheduled local hearings. Installations have also been delayed by unnecessary landscape screening and the time consuming process needed to obtain special permits. Costs have become prohibitive as a result of the foregoing and the need to retain local counsel. Indeed, it is not uncommon for the expenses of complying with restrictions to approach the costs of the antenna to be installed before a permit is finally granted.

In our experience, local restraints have been imposed without regard for the Preemption Order and even in the face of explication by local counsel to city authorities that the local ordinance is inconsistent with the Preemption Order. The problem is often compounded by the reluctance of many hotel owners/operators to become actively engaged in litigation against

the municipality which provides it with the many licenses and permits needed to maintain its operations. These problems are occurring on a regular and continuous basis throughout the industry. The resistance of many local authorities to bringing local ordinances and municipal policies into compliance with the Commission's rules continues unabated to this date and clearly indicates that additional FCC action is necessary.

We believe that the adoption of the new rules proposed in the Notice is the action urgently needed to protect the rights of users of interstate communications. In this regard, CVE particularly supports the Commission's decision to create rebuttable presumptions of unreasonableness for one-meter antennas and for two-meter earth stations where commercial or industrial uses are generally permitted by local land use regulation.⁴ We believe that the creation of rebuttable presumptions will maximize consumer choices by developing a competitive marketplace for the provision of telecommunications goods and services while discouraging local ordinances which engage in arbitrary discrimination against satellite-delivered

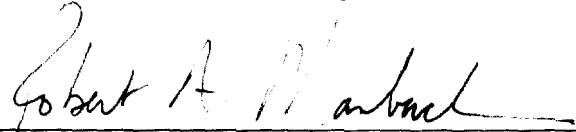
⁴We note that the proposed revisions to Section 25.104 assume that the antennas will be parabolic reflectors with a circular profile described by the diameter of the circle. COMSAT believes that there will be other types of satellite receive-only antennas in wide use, including flat antennas with a square profile. Therefore, COMSAT proposes that the text of Section 25.104 be amended to include antennas that are either one-meter or less on a side or two-meters or less on a side, depending on whether commercial or industrial uses are generally permitted in an area.

services. For these reasons, CVE supports the modifications to the Commission's Rules proposed in the Notice and urges their prompt adoption.

Respectfully submitted,

COMSAT Video Enterprises, Inc.

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